

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

STEVEN DWAYNE GILBERT  
JCCC #13914, TDCJ #423646

VS.

MITCH NEWMAN, ET AL.

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CIVIL ACTION NO. 1:22cv254

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Steven Dwayne Gilbert, an inmate confined at the Jasper County Correctional Center in Jasper, Texas, proceeding *pro se*, brought the above-styled lawsuit.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing this action without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

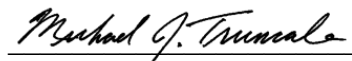
After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff complains of the conditions of his confinement at the Jasper County Correctional Center. The factual allegations set forth in plaintiff's complaint, however, fail to rise to the level of demonstrating he was in "imminent danger of serious physical injury" at the time he filed the complaint. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Additionally, to the extent plaintiff now argues he does not have three prior cases which have been dismissed as frivolous, malicious, or for failing to state a claim upon which relief may be granted, plaintiff is incorrect.<sup>1</sup> Plaintiff is a prolific recreational litigant having filed at least 17 lawsuits while incarcerated. At least three of plaintiff's previous lawsuits were dismissed as frivolous or for failing to state a claim upon which relief may be granted. *See Gilbert v. Livingston*, No. 4:15cv1319 (S.D. Tex. May 28, 2015) (dismissed as barred by 1915(g)); *Gilbert v. Livingston*, No. 4:15cv370 (S.D. Tex. Feb. 17, 2015)(dismissed for failing to state a claim); *Gilbert v. Stacks*, No. 9:05cv24 (E.D. Tex. Mar. 24, 2005)(dismissed as frivolous); and *Gilbert v. Jasper Co. Law Enf't*, No. 1:90cv905 (E.D. Tex. Mar. 12, 1991) (dismissed as frivolous). Therefore, plaintiff is barred from proceeding with this action on an *in forma pauperis* basis.

ORDER

Accordingly, plaintiff's objections are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is ADOPTED. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

**SIGNED this 21st day of February, 2023.**



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Michael J. Truncala  
United States District Judge

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<sup>1</sup> Plaintiff confirmed in his form complaint that his TDCJ inmate number is 423646, matching the dismissed cases. *See* Complaint, ECF No. 1 at \*4.